

Request of the City of South Portland, Maine, for Extension of Public Comment Period for Proposed Consent Decree Under the Clean Air Act

Ref: *United States v. Global Partners L.P., et al.* D.J. Ref. No. 90-5-2-1-11428

To the Assistant Attorney General, Environment and Natural Resources Division:

On March 25, 2019 the Department of Justice (DOJ) filed a complaint and lodged a proposed consent decree with the United States District Court for the District of Maine in the lawsuit entitled *United States v. Global Partners L.P., et al.*, Civil Action 19-cv-00122. The complaint was filed under Section 113(a)(1) of the Clean Air Act, 42 7413(a)(1), and the Maine state implementation plan. The United States' complaint alleges potential and actual excess emissions of volatile organic compounds ("VOC") at the defendants' South Portland, Maine petroleum products storage facility.

The proposed consent decree ("Consent Decree") would require defendants to (i) pay a civil penalty of \$40,000, plus interest, (ii) perform a supplemental environmental project with a minimum expenditure of \$150,000 involving the replacement of certain woodstoves, (iii) perform certain measures at the defendant's South Portland facility to address past VOC emissions and limit future VOC emissions, and (iv) require the defendants to apply for an amended license from the Maine Department of Environmental Protection. Notice of the lodging of the Consent Decree was originally published in the Federal Register on April 1, 2019. See, 84 FR 12293. The publication of the original notice opened a thirty (30) day period for public comment on the decree.

The City Council of the City of South Portland ("City"), acting through its undersigned legal counsel, Norman, Hanson & DeTroy, LLC, hereby requests that the comment period be extended by a period of 90 days so that it may (i) continue to gather relevant information from environmental, public health and safety experts, inform itself and its residents as to the facts and the science behind the very serious allegations against the defendants, (ii) obtain feedback from its residents, especially those who live in the vicinity of the defendants' facility, and (iii) consider appropriate responses to the various elements of the proposed consent decree.

In direct support of this request, the City submits:

1. Prior to the review of an article in the March 25, 2019 edition of the *Portland Press Herald*, the City was completely unaware of (a) any emissions violations alleged by the United States Environmental Protection Agency ("EPA"), (b) any enforcement action taken by the EPA, (c) any lawsuit against the defendants, and (d) the negotiation of a proposed consent decree or the terms of the final proposed consent decree between the EPA and the defendants.
2. Subsequent to learning of the above, the City contacted counsel for the EPA. Despite numerous requests, the EPA, through the DOJ, has consistently refused to (a) comment on the proposed consent decree, or (b) provide the City with any information as to the factual, technical or scientific basis of the allegations against the defendants.
3. The EPA has declined invitations to participate in public workshops held by the City Council to inform itself and City residents and to consider the allegations and remedies raised in the

proposed consent decree. As a result, the City has had to use valuable resources and limited comment period time to investigate and understand a case the EPA has apparently been investigating and preparing for years.

4. The City has learned through its own investigation that, despite the fact that the EPA is alleging violations and potential violations of the license issued to the defendants by the Maine Department of Environmental Protection ("DEP"), the Maine DEP does not consider the defendants to be in violation of their license.
5. The City has learned through its own investigation that Region I of the EPA and the Maine DEP apparently apply different methodologies in the calculation of flow rates to determine VOC emissions.
6. The City has used a significant portion of the comment period to attempt to understand and to educate its residents as to (a) the nature of the allegations in the EPA's complaint, (b) the difference between the positions of the US EPA and the Maine DEP with respect to the calculation of emissions from the defendant's facility, (c) whether or not emissions violations have in fact occurred, (d) the terms and conditions of the proposed consent decree, and (e) the public health risks attendant to the presence of and exposure to VOCs.
7. In the short period of time since the discovery of the lawsuit and the proposed consent decree, the City of South Portland has held several public workshops and received many requests from residents that the comment period be extended.
8. Due to the short time period and numerous scheduling conflicts, the City has as of yet been unable to obtain the presence at a public workshop of a qualified and independent expert on the toxicology and public health risks relating to exposure to VOCs.
9. Additional time is required for the City to fully understand the nature of the alleged violations, the potential environmental and public health effects of the alleged violations, and to formulate comprehensive and meaningful comments to the Consent Decree.

In light of the foregoing, the City of South Portland respectfully requests that the comment period in this matter be extended by 90 days, to July 1, 2019.

Respectfully submitted,



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